IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION No.6952 OF 2005

Mrs. Swati Jayant Natu .. ..Petitioner

Versus

Shri Ramchandra Damodar Walimbe .. ..Respondent

Mr.Harihar Bhave a/w Manisha Aant i/b Bhave & Co. for petitioner

Mr.Hitesh Vyas i/b Ajit Kulkarni & H.P. Vyas for respondent

CORAM : P.V.KAKADE, J.

DATE : 12TH JANUARY 2006.

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. The Petitioner-landlord has preferred this Writ Petition against the judgment and order passed by Addl. District Judge, Pune dated 4th March 2005 allowing the appeal and setting aside the judgment and decree passed by lower court in Civil Suit No.330 of 2003.

. The Petitioner-landlord filed the suit for possession of the residential premises admeasuring about 700 sq. ft. consisting of three rooms under the provisions of the Maharashtra Rent Control Act, basically on the ground of change of user of the premises and availability of alternative suit premises continuously for a period of six months prior to the date of filing of the suit for which it was let out, without just and proper cause. The learned counsel for the petitioner brought to my notice the evidence on record was to the effect that the tenant had changed the user from residential to commercial one as there were business of two firms conducted from the suit premises viz. Spring Water Dealers and M/s. Metal Mates. It was also submitted that the son of the tenant was conducting the business of DTP Unit from the suit premises and therefore, there was sufficient evidence to show that the change of user had

occurred. However, the evidence, as observed by the appellate court, definitely shows that there was no evidence to show that DTP Unit was being run from the suit premises. So far as other two businesses are concerned, no doubt that the registered address of the said businesses was from the suit premises. However, the very nature of the said business is that no such effective business can be conducted except for giving the registered address of the said business, and therefore, the dominate purpose for which the suit premises was used is still unchanged and therefore, the lower court has discarded the evidence of the plaintiff in that regard.

3. Similarly the contention that there is non user of the suit premises for six months prior to the filing of the suit is also based on shaky ground. The trial court has adopted a reasoning to the effect that that only because the daughter-in-law of the tenant, who is residing abroad has a separate accommodation elsewhere in the City, it must inferred that the family had flat in Paud Road for the purpose of residence. In my considered view, the entire approach of the trial court is patently erroneous when he has sought to put burden of proving that the alternative accommodation is not available and the

residence of the defendant is not shifted on the defendant. On the other hand, it was for the landlord to come with cogent and conclusive evidence in that regard in order to show that residence of the tenant is effectively shifted and the suit premises is not used for the statutory period prior to the filing of the suit.

4. Under the circumstances, I have no hesitation to hold that the reasoning adopted and findings recorded by the appellate court is legal and proper and therefore it would brook no interference. In the result the petition stands dismissed with no order as to costs.

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